

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ORDER

Petitioner, a state prisoner appearing pro se, has filed a Notice of Intent to Appeal, which the Court will construe as a request for a Certificate of Appealability (“COA”). Before his appeal may proceed, Petitioner must be granted a COA. See 28 U.S.C. § 2253(c)(1)(A); Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000) (holding that § 2253(c)(1)(A) requires a state prisoner to obtain a COA regardless of whether he is seeking relief under § 2254 or under § 2241).

Petitioner is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. See Slack v. McDaniel, 529 U.S. 473, 483 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in Barefoot v. Estelle, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits, . . . [t]he petitioner must demonstrate that

reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 484.

Here, Petitioner has failed to offer any basis for reasonable debate. As the Magistrate Judge's Report and Recommendation clearly explained, the present case is a second or successive petition and has been filed without first obtaining permission from the Tenth Circuit Court of Appeals. This determination is not reasonably debatable and, as the Court noted in adopting the R&R, warrants no discussion or analysis, as the Magistrate Judge thoroughly and correctly addressed the issues. Accordingly, Petitioner's request for a COA is denied.

As set forth more fully herein, Petitioner's Notice of Intent to Appeal (Dkt. No. 16) is construed as a request for a Certificate of Appealability and is DENIED.

IT IS SO ORDERED this 10th day of August 2021.



ROBIN J. CAUTHRON
United States District Judge